

ENVIRONMENTAL LAW AND JUSTICE CENTER

THURGOOD MARSHALL SCHOOL OF LAW

3100 Cleburne Avenue

Houston, Texas 77004

Martina E. Cartwright,
Director

713 - 313-1019- OFFICE
713 - 313-1191 - FAX

Juan Parras,
Community Outreach Coordinator



June 7, 2006

VIA U.S. FIRST CLASS MAIL AND FACSIMILE: (512) 239-3311

LaDonna Castaneula, Chief Clerk
Office of the Chief Clerk
Texas Commission for Environmental Quality
P.O. Box 13087
Austin, TX 78711-3025

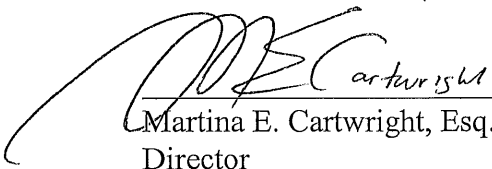
**Re: In the Matter of the Request by Southern Crushed Concrete, Inc. for
Relocation pursuant to Air Quality Permit No. 70136L001; TCEQ
DOCKET NO. 2004-0839-AIR**

Dear Ms. Castanuela:

Please find enclosed Protestants Texas Pipe & Supply, Co., Ltd and CASCC's Response to the Executive Director's Response to the Office of General Counsel's May 10, 2006 Letter. Copies of the attached have been forwarded to all parties of record.

Thank you for your time and consideration of this matter. If you have any questions, please do not hesitate to call.

Regards,


Martina E. Cartwright, Esq.
Director

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 JUN 12 AM 10:52
CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-05-1040
TCEQ DOCKET NO. 2004-0839-AIR

APPLICATION BY SOUTHERN
CRUSHED CONCRETE, INC., TO
CHANGE THE LOCATION OF A
CONCRETE CRUSHING FACILITY IN
HARRIS COUNTY PURSUANT TO
PERMIT NO. 40072

§ BEFORE THE STATE OFFICE
§
§ ADMINISTRATIVE HEARINGS
§
§ and the TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
JUN 12 AM 10:52
CHIEF CLERK'S OFFICE

**CITIZENS AGAINST SOUTHERN CRUSHED (CASCC) and TEXAS PIPE AND
SUPPLY (TPS) REPLY TO ED'S RESPONSE TO OGC MAY 10, 2006 LETTER**

COME NOW, PROTESTANTS CITIZENS AGAINST SOUTHERN
CRUSHED (hereinafter "CASCC") and TEXAS PIPE AND SUPPLY LTD, INC.
(hereinafter "TPS") and hereby submit their reply to the Response filed by the Executive
Director ("ED") of the Texas Commission for Environmental Quality ("TCEQ") in the
above-styled matter.

The CASCC and TPS supports the replies filed by City of Houston ("City") and
Harris County ("County") and additionally files this separate reply to the response of the
ED.

In support thereof the Protestants would show as follows:

I.

OVERVIEW

On or about May 10, 2006, the Office of General Counsel (OGC) of the Texas
Commission for Environmental Quality requested that the Executive Director (ED)

review the record in the underlying matter and brief the OGC on a number of matters, specifically issues pertaining to modeling performed by the Applicant. Initially, in its response, the ED identified areas of limitation—most notably, the fact that it did not participate as a party in the contested case hearing and that pursuant to 30 T.A.C. §80.257, the ED’s discussion would focus primarily on legal and policy related issues. However, the brief response proffered by the ED suggests—at best—a perfunctory review of the record—which includes three to four volumes of transcribed testimony, attendant exhibits, and various other documents filed in the above-referenced matter. The ED’s response is replete with “consistent with agency practice and/or guidelines” without little to any in-depth discussion of how such conclusion(s) could be reached. Indeed, there is NO discussion when it pertains to the appropriateness of said modeling issues in THIS particular case. The ED’s discussion has reduced a request for specificity to one based on generalities.

Simply saying it is so, does not make it so! With six areas identified as potentially problematic by the OGC—where each pertained to modeling performed and calculations generated by the Applicant—the ED has produced less than four pages of discussion.

At best, the ED’s response is wholly deficient. At worst, it is non-responsive—in its entirety—to the OGC’s request and should be discounted.

As noted, *supra*, the Protestants support the replies proffered by City of Houston and Harris County, incorporating them by reference. However, the Protestants desire to provide some discussion and elicit further response on four of the six issues referred by OGC and “reviewed and analyzed” by the ED.

II.

DISCUSSION

1. Whether Applicant's use of the AP-42 unpaved road factor is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The ED claims “(t)he [Concrete Batch Plant] guidance provides that an Applicant could use the unpaved road equation for paved roads by changing the equation's parameters for silt content to the paved road value.”¹ First and foremost, this representation is not correct. While the ED cited to the entire guidance to support this proposition, the ED does not reference a particular section or page of the guidance that supports this conclusion. Secondly, allowing the applicant to change the equation's silt parameter to the paved road value would ultimately result in bad policy.

As shown in the AP-42, emissions from unpaved roads “vary directly with the fraction of silt (particles smaller than 75 microns [μm] in diameter) in the road surface material.”² When the ED claims this can be changed to the “paved road value,” it is not exactly clear what the ED means by that statement. The parameter “closest” to the unpaved road equation's “silt content” in the paved road equation is the “silt loading” parameter. The silt loading “refers to the mass of silt-sized material (equal to or less than 75 micrometers [μm] in physical diameter) per unit area of the travel surface.”³ Is the ED claiming that the silt content parameter used in the unpaved road equation can be changed to the paved road equation silt loading parameter? If so, how does the ED propose to change the units of the silt loading parameter (g/m^2) to match the required units of the silt

¹ ED's Response, at p. 2

² Exhibit A-26 at 13.2.2.-1.

³ Exhibit P-2 at 13.2.1-2

content (%)? The silt content parameter in the unpaved road equation is divided by a factor of 12 and raised to a power of either 0.9 or 0.7 (depending upon the particle size of the emissions to be calculated). The silt loading parameter in the paved road equation is divided by a factor of 2 and raised by a power of 0.65. How is this difference accounted for by the ED? The vehicle weight parameter is divided by 3 and raised by a power of 0.45 in the unpaved road equation. The vehicle weight parameter is divided by 3 and raised by a power of 1.5 in the paved road equation. How is this difference accounted for by the ED? If the ED is claiming that the “paved road value” can be used, doesn’t common sense dictate that it be used in the paved road equation and not the unpaved road equation? What data does the ED have that shows that the AP-42 unpaved road equation used in conjunction with a 90% reduction for paving provides a better estimate of the emissions from paved roads than the AP-42 paved road equation?

3. Whether the Applicant’s use of the paved road control factor for milled asphalt roads is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

This particular section merited exactly three sentences of discussion, with a conclusion supported by one statement: “If the applicant is representing that milled asphalt roads meet the [paved road] requirement .. then it would be consistent to use the paved road control factor.” Unfortunately, this analysis and subsequent discussion suggests that an in-depth review is clearly lacking.

One of the primary issues presented during the hearing and highlighted throughout the Closing Briefs filed by the Protestants, City of Houston, and Harris County was whether milled roads qualify as “paved.” The transcript of the hearing

demonstrates clearly divergent opinions on the issue. Yet, the ED provided no discussion of that divergence, merely accepting as true the Applicant's statement regarding the "quality" of the roads. The issue of whether milled roads are paved is vital for the following reason: the impact to the control efficiency factor.

If the roads were not considered paved, it would decrease the Applicant's claimed control efficiency factor from 99% to 70%. This would present a significant problem for the Applicant's modeling and the calculations generated on emissions, as 70% of annual emissions from the proposed facility would come from roads.⁴

4. Whether Applicant's failure to take into account stockpile heights when modeling stockpile emissions is consistent with agency practice and/or guidelines, and whether it was appropriate in this case.

The ED is generally correct that "taller stacks get better dispersion and consequently reduced concentrations than shorter ones." However, the ED is incorrect when it states that "(t)he concept would apply to stockpiles as well." A stack is typically a vertical, cylindrical structure from which material emanates only from the stack top. There are no emissions along the length of the stack. There are four sources of emissions associated with a stockpile: (1) wind generated emissions; (2) emissions generated by dropping material onto the stockpile; (3) emissions generated by removing material from the stockpile; and (4) emissions generated by vehicular traffic associated with the stockpiles.

A stockpile will have wind-generated emissions from the entire exposed surface area of the stockpile. A stockpile will have wind-generated emissions from the exposed sides starting at ground level extending to the top of the storage pile. In reality,

⁴ TR, p. 154-55

increasing the height of a stockpile will typically increase the exposed surface area of the stockpile.

Therefore, increasing the height of a stockpile will increase the total amount of wind-generated emissions.

Moreover, material—for these types of operations—is typically dropped onto the top of stockpiles. Thus, the higher the stockpile, the higher these emissions will occur.

These issues are relevant to the discussion and require more than the “glancing” review and cursory response offered by the ED.

5. Whether Applicant’s use of the “Bissonnet” monitor to provide background concentrations for PM_{2.5} is consistent with agency practice and/or guidelines and whether it was appropriate in this case.

The Protestants are perplexed by one of the two issues identified by the ED in reference to evaluating the appropriateness of using data from the “Bissonnet” monitor for background concentration levels. A subsequent re-reading of the OGC’s request does not reveal an expectation of “evaluating PM_{2.5}.” Thus, the Protestants are at a loss to provide a cogent reply to this brief overview on the “activities” of the TCEQ Air Dispersion Modeling Team as it relates to guidance on PM_{2.5}.

As it regards the first issue: determining background concentration levels, background concentration should be reflective of current sources of emissions in the area, including industrial sources and non-industrial sources.⁵ While the best method of obtaining background concentration is to perform a year’s worth of monitoring at the site in question, monitoring data from a location nearby or *representative* of the site in

⁵ Exhibit P-11, p. 22

question will suffice.⁶ Thus, the ED is only partially correct that only nearby monitoring data can be employed. The same “guidance” referenced by the ED also emphasizes that the importance of “representativeness.” Indeed, the memo notes that “[r]epresentativeness is determined by *reviewing monitor location*, quality of the data, and currentness of the data.”⁷

In the instant matter, the Applicant’s expert used data from a monitor within the recommended “10 km” range. However, the location of that monitor is hardly representative of the proposed site. The Bissonnet monitoring site is located in a park, in a heavily residential area, with few commercial or industrial facilities nearby and no major highways.

In the instant matter, the record demonstrates that the 288 site is bounded by one major highway, in close proximity to a second major highway, and surrounded by light industry. Even the the ALJ—in his proposal for decision—found that the Bissonnet site “is not entirely representative of the 288 yard.” At the very least, the ED should have provided more discussion on the issue of “representativeness” vs. “distance.”

III.

CONCLUSION

The review and discussion provided by the ED is wholly inadequate to present any clear guidance to the Commission. Thus, at the very least, the Commission should discount the “findings” of the ED or at the most, request a more in-depth analysis with a significant amount of discussion to be provided on each of the six issues it referred to the ED.

⁶ Id.

⁷ Exhibit A-33, at p. 1

In fact, rather than prove that the Applicant has met its burden on the six ORIGINAL issues referred by the Commission to SOAH, the ED's discussion on the matter suggests that the Applicant has failed to meet its burden under each of the issues identified by the Commission.

The Protestants strongly recommend that the Applicant's relocation request be denied.

Respectfully Submitted,



Martina E. Cartwright, Esq.
TBN 00793475
ENVIRONMENTAL LAW & JUSTICE CENTER
Thurgood Marshall School of Law
3100 Cleburne Avenue
Houston, Texas 77004
(713) 313-1019
(713) 313-1191

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of Protestants CASC and Texas Pipe & Supply, Co., Ltd.'s Reply to the ED's Response to the May 10, 2006 Letter has been provided to all parties of record, via the methods specified, on the 7th day of June 2006.

Pamela Giblin
Derek McDonald
Baker & Botts, L.L.P.
98 San Jacinto Blvd, STE 1600
Austin, Texas 78701 **(Electronic Mail, U.S. Mail)**

Garret Arthur, Attorney
Brad Alan Patterson, Attorney
Environmental Law Division
Texas Commission on Environmental Quality--MC 175

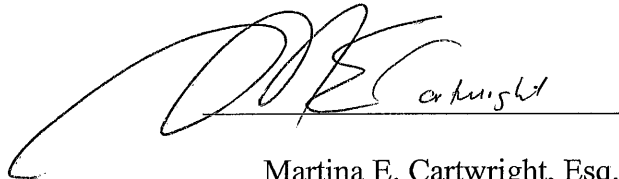
P.O. Box 13087
Austin, Texas 78711-3087 **(Electronic Mail, US MAIL)**

Mary Alice C. McKaughan, Attorney
Office of the Public Interest Counsel
Texas Commission on Environmental Quality--MC 103
P.O. Box 13087
Austin, Texas 78711-3087 **(Electronic Mail, US MAIL)**

Iona Givens, Sr. Ass't City Attorney
City of Houston
900 Bagby
Houston, Texas 77002 **(Electronic Mail, US MAIL)**

Snehal R. Patel, Attorney
Harris County Attorney's Office
1310 Prairie, Room 940
Houston, Texas 77002 **(Electronic Mail, US MAIL)**

Honorable Sheila Jackson Lee
1919 Smith Street, STE 1180
Houston, Texas 77004

A handwritten signature in black ink, appearing to read 'M. Cartwright', is written over a horizontal line.

Martina E. Cartwright, Esq.
Texas Bar No. 007934